

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MAY 27 2009

5-27-2009

JUDGE GEORGE M. MAROVICH

Laura Phelan,

Plaintiff,

-vs-

Damien Dyas,

Defendant.

No. 04 CV 8327

(Judge Marovich)

**PLAINTIFF'S MOTION FOR
JUDGMENT AS A MATTER OF LAW**

Pursuant to Rule 50 of the Federal Rules of Civil Procedure, plaintiff, by counsel, moves the Court to enter judgment as a matter of law in her favor and submit only the issue of damages to the jury.

Grounds for this motion are as follows:

1. The parties agree that defendant caused plaintiff to be seized within the meaning of the Fourth Amendment.
2. The parties also agree that defendant was acting under color of law.
3. The sole issue for the jury on liability is therefore whether defendant had probable cause for the seizure.
4. The law of the case is that the LEADS report did not provide Dyas with probable cause. *Phelan v. Village of Lyons*, 531 F.3d 484, 488 (7th Cir., 07-2224, slip op. 6.)

5. Insofar as Dyas claims that plaintiff's "evasive driving" provided probable cause for the felony traffic stop, a reasonable jury would not have a legally sufficient evidentiary basis to find for defendant on liability.

6. It is therefore submitted that the Court should enter judgment as a matter of law in favor of plaintiff and submit only the issue of damages to the jury.

Respectfully submitted,

/s/ Kenneth N. Flaxman

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